

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID RUFFIN,

Plaintiff,

v.

Case Number 09-14664-BC
Honorable Thomas L. Ludington

FRITO-LAY, INC.,

Defendant.

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**ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION,
GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION TO STRIKE
AFFIRMATIVE DEFENSES, AND STRIKING CERTAIN AFFIRMATIVE DEFENSES**

Magistrate Judge Charles E. Binder issued a report and recommendation [Dkt. # 15] on June 10, 2010, recommending that the Court grant in part and deny in part Plaintiff’s motion to strike affirmative defenses [Dkt. # 10]. Either party may serve and file written objections “[w]ithin fourteen days after being served with a copy” of the report and recommendations. 28 U.S.C. § 636(b)(1). The district court will make a “de novo determination of those portions of the report . . . to which objection is made.” *Id.* Where, as here, neither party objects to the report, the district court is not obligated to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985).

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation [Dkt. # 15] is **ADOPTED**.

It is further **ORDERED** that Plaintiff’s motion to strike affirmative defenses [Dkt. # 10] is **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that affirmative defenses “(1) failure to state a claim upon which relief can be granted”; “(3) failure to exhaust administrative remedies”; “(7) Defendant’s conduct

was not malicious; therefore, punitive damages are unavailable”; and “(8) alleged damages were caused by Plaintiff’s own acts or failure to act” are **STRICKEN**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: July 2, 2010

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 2, 2010.

s/Tracy A. Jacobs
TRACY A. JACOBS